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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
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| 10/071,137      | 02/07/2002  | George L. Payet      | 7919RX*D1           | 4221             |

27752 7590 08/25/2003

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CINCINNATI, OH 45224

EXAMINER

MRUK, BRIAN P

| ART UNIT | PAPER NUMBER |
|----------|--------------|
|----------|--------------|

1751

DATE MAILED: 08/25/2003

9

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Applicant(s)

10/071,137

PAYET, GEORGE L.

Examiner

Brian P Mruk

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 28 March 2002.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 21-30 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 21-30 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                                  | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____  |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                         | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) <u>6</u> . | 6) <input type="checkbox"/> Other:  |

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 112***

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 21-27 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

3. Claim 21 contains the phrase "at least about". This phrase renders the claim indefinite, since one of ordinary skill in the art would not be able to ascertain the metes and bounds of the phrase "at least about". For instance, is a temperature of 295<sup>0</sup> F "at least about 300<sup>0</sup> F" as recited in claim 21? The examiner suggests that this phrase should be changed to "at least". "Claims reciting "at least about" are invalid for indefiniteness where there was close prior art and there was nothing in the specification, prosecution history, or the prior art to provide any indication as to what range of specific activity is covered by the term about." See MPEP 2173.05(b). Appropriate correction and/or clarification is required.

4. Claims 22-27 are rejected under 35 U.S.C. 112, second paragraph, for being dependent upon a claim with the above addressed 112 problem.

***Claim Rejections - 35 USC § 102***

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

6. Claims 21-25, 28 and 30 are rejected under 35 U.S.C. 102(b) as being anticipated by Hendrix et al, U.S. Patent No. 4,396,390.

Hendrix et al, U.S. Patent No. 4,396,390, discloses a process for treating a textile fabric comprising impregnating a fabric with an aqueous solution of formaldehyde and a curing catalyst to provide a wet pickup of 15-35% and to provide 0.5-3.0% by weight of formaldehyde on the fabric, followed by drying and curing the fabric at a temperature of 250 to 450 degrees Fahrenheit (see col. 7, lines 4-40), per the requirements of the instant claims. Therefore, instant claims 21-25, 28 and 30 are anticipated by Hendrix et al, U.S. Patent No. 4,396,390.

***Double Patenting***

7. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double

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patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

8. Claims 21-30 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-20 of U.S. Patent No. 5,885,303. Although the conflicting claims are not identical, they are not patentably distinct from each other because Payet, U.S. Patent No. 5,885,303, claims a similar process for treating unresinated fabrics comprising treating the fabrics with an aqueous solution of formaldehyde, a silicone elastomer, and a catalyst, followed by heat curing the fabric at a temperature of 300-350 degrees Fahrenheit (see col. 11, claims 1-20 of Payet, U.S. Patent No. 5,885,303), per the requirement of instant claims 21-27.

9. Claims 21-30 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-34 of U.S. Patent No. 6,375,685. Although the conflicting claims are not identical, they are not patentably distinct from each other because Payet, U.S. Patent No. 6,375,685, claims a similar process for treating unresinated fabrics comprising treating the fabrics with an aqueous solution of formaldehyde, a silicone elastomer, and a catalyst, followed by heat curing the fabric at a temperature of 300-350 degrees Fahrenheit (see col. 25, claims 1-34 of Payet, U.S. Patent No. 6,375,685), per the requirement of instant claims 21-27.

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10. Claims 21-30 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-48 of U.S. Patent No. 6,511,928. Although the conflicting claims are not identical, they are not patentably distinct from each other because Payet, U.S. Patent No. 6,511,928, claims a similar process for treating unresinated fabrics comprising treating the fabrics with an aqueous solution of formaldehyde, a silicone elastomer, and a catalyst, followed by heat curing the fabric at a temperature of 300-350 degrees Fahrenheit (see col. 16, claims 1-48 of Payet, U.S. Patent No. 6,511,928), per the requirement of instant claims 21-27.

11. Claims 21-30 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-38 of U.S. Patent No. 6,528,438. Although the conflicting claims are not identical, they are not patentably distinct from each other because Payet, U.S. Patent No. 6,528,438, claims a similar process for treating unresinated fabrics comprising treating the fabrics with an aqueous solution of formaldehyde, a silicone elastomer, and a catalyst, followed by heat curing the fabric at a temperature of 300-350 degrees Fahrenheit (see col. 11, claims 1-38 of Payet, U.S. Patent No. 6,528,438), per the requirement of instant claims 21-27.

12. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

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13. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Brian Mruk whose telephone number is (703) 305-0728. The examiner can normally be reached on Monday-Thursday from 7:00 AM to 5:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Yogendra Gupta, can be reached on (703) 308-4708. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9310 (Before Final) and (703) 872-9311 (After Final).

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0661.

BM

Brian Mruk  
August 19, 2003

*Brian P. Mruk*

Brian P. Mruk  
Patent Examiner  
Tech Center 1700